STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ALBERT NATIAN, Charging Party, v. AFT, LOCAL 1521 (LOS ANGELES COLLEGE FACULTY GUILD), Respondent.	Case No. LA-CO-1584-E PERB Decision No. 2364 March 25, 2014

Appearance: Albert Natian, on his own behalf.

Before Martinez, Chair; Huguenin and Banks, Members.

DECISION[1]

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Albert Natian (Natian) of the dismissal (attached) by the Office of the General Counsel of Natian's unfair practice charge. The charge, as amended, alleges that the AFT, Local 1521 (Los Angeles College Faculty Guild) breached its duty of fair representation in violation of section 3543.6 of the Educational Employment Relations Act (EERA)[2] with respect to Natian's request for transfer from Valley College to City College.

The Board has reviewed the case file in its entirety and has fully considered the issues raised on appeal. Based on this review, we find the warning and dismissal letters to be supported by the factual allegations with some exceptions as noted below. Notwithstanding

[1] PERB Regulation 32320, subdivision (d), provides in pertinent part: "Effective July 1, 2013 a majority of the Board members issuing a decision or order pursuant to an appeal filed under Section 32635 [Board Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential." Having met none of the criteria enumerated in the regulation, the decision herein has not been designated as precedential. (PERB Regs. are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

[2] EERA is codified at Government Code section 3540 et seq.

the factual errors, we find the legal analysis and conclusion in the warning and dismissal letters to be well-reasoned and in accordance with applicable law. Accordingly, with the factual corrections duly noted, the Board hereby adopts the warning and dismissal letters as the decision of the Board itself.[3]

DISCUSSION

Pursuant to PERB Regulation 32635, subdivision (a), an appeal from dismissal must:

> (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
> (2) Identify the page or part of the dismissal to which each appeal is taken;
> (3) State the grounds for each issue stated.

To satisfy the requirements of PERB Regulation 32635, subdivision (a), the appeal must sufficiently place the Board and the respondent "on notice of the issues raised on appeal." (*State Employees Trade Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H *(State Employees Trade Council); City & County of San Francisco* (2009) PERB Decision No. 2075-M.) An appeal that does not reference the substance of the Board agent's dismissal fails to comply with PERB Regulation 32635, subdivision (a). *(United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381 (*Pratt*); *Lodi Education Association (Huddock)* (1995) PERB Decision No. 1124; *United Teachers – Los Angeles (Glickberg)* (1990) PERB Decision No. 846.) Likewise, an appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635, subdivision (a). *(Pratt; State Employees Trade Council; Contra Costa County Health Services Department* (2005) PERB Decision No. 1752-M; *County of Solano (Human Resources Department)* (2004) PERB Decision No. 1598-M.)

[3] As stated in the dismissal letter, on January 24, 2013, Natian informed Pat Allen by e-mail that he was going to file a PERB charge and he stopped communicating with the exclusive representative about his grievance. We note that an exclusive representative's duty of fair representation is not extinguished by the filing of a PERB charge.

The appeal letter, in its entirety states:

> This is an appeal for the above-referenced case number.
>
> I have tried exhaustively to demonstrate a prima facie case. Unfortunately PERB Senior Regional Attorney [name omitted] and PERB General Counsel [name omitted] have selectively ignored implicating allegations against AFT Local 1525 Union Representative Pat Allen's conduct which amounts to bad faith and arbitrary representation. A key component of my UPC against AFT Local 1521 representative Pat Allen is that her bad faith and arbitrary conduct had resulted in a situation that made my reliance on her representation no longer reasonable or productive, and that I could no longer reasonably trust in her good will in advancing my case.
>
> I am appealing in the expectation that the accompanying documents will be read and given a thorough consideration.
>
> Thank you.
>
> Sincerely,
>
> Albert Natian

Attached to the appeal letter are the following documents: (1) a copy of the statement of charge that was included with Natian's initial unfair practice charge; (2) a copy of Natian's response to the warning letter that was included with Natian's amended unfair practice charge;[4] and (3) a copy of the dismissal letter. By relying exclusively on a copy of the initial and amended charge documents, the appeal merely reiterates facts alleged in the unfair practice charge. Natian does not state specific issues to which the appeal is taken, identify the page or part of the dismissal to which the appeal is taken or state the grounds for each issue stated. The appeal raises no issues that were not adequately addressed by the Office of the General Counsel in the warning and dismissal letters. Natian simply wants an additional review of his charge documents. That is not the role of an appellate body. Therefore, Natian's appeal is

[4] Natian also included copies of two attachments to the amended unfair practice charge, one of which included a notation that was altered in form but not in substance.

denied. (*City of Brea* (2009) PERB Decision No. 2083-M [failure to comply with PERB Reg. 32635, subd.(a), is grounds for denial of appeal on that basis alone].)

At the end of the warning letter, the Office of the General Counsel concluded:

> For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may amend the charge.

(Fn. omitted.) Natian responded by amending the charge to point out the factual and legal deficiencies he believed the warning letter contained. The Office of the General Counsel addressed Natian's main legal argument in the dismissal letter, that is, whether the totality of the allegations, not just the allegations regarding conduct that occurred within the limitations period, should be evaluated in determining whether Natian had established a prima facie case. We agree with the Office of the General Counsel's analysis and its conclusion that even considering the totality of the circumstances, the charge does not state a prima facie case of a breach of the duty of fair representation.

The Office of the General Counsel did not however, correct blatant factual errors contained in the warning letter. Natian was not transferred to City College in fall of 2012. Carlos Covarrubias was never identified in the charge documents as "District Administrator." And, Natian was not assigned to teach Mathematics at City College for the 2012-2013 school year.

Natian pointed out these errors, but they were not corrected in the dismissal letter. We have thoroughly reviewed the file and conclude that correction of these errors does not salvage the charge. Perhaps for this reason the Office of the General Counsel chose not to correct them in the dismissal letter. Or, perhaps it was an inadvertent oversight. In either event, the parties should feel confident that when the Office of the General Counsel dismisses an unfair practice charge, it understood the basic factual allegations contained in the charge.

ORDER

The unfair practice charge in Case No. LA-CO-1584-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Huguenin and Banks joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2809
Fax: (818) 551-2820

October 30, 2013

Albert Natian

Re: *Albert Natian v. AFT, Local 1521 (Los Angeles College Faculty Guild)*
Unfair Practice Charge No. LA-CO-1584-E
DISMISSAL LETTER

Dear Mr. Natian:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 3, 2013. Albert Natian (Charging Party) alleges that the American Federation of Teachers, Local 1521 (Los Angeles College Faculty Guild) (AFT or Respondent) violated section 3543.6 of the Educational Employment Relations Act (EERA or Act)[1] by failing to fulfill its duty of fair representation.

Charging Party was informed in the attached Warning Letter dated October 4, 2013, that the above-referenced charge did not state a prima facie case. Charging Party was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, Charging Party should amend the charge. Charging Party was further advised that, unless Charging Party amended the charge to state a prima facie case or withdrew it on or before October 14, 2013, the charge would be dismissed. On October 14, 2013, Charging Party filed a First Amended Charge.

Discussion

The October 4, 2013 Warning Letter provided a summary of Charging Party's factual allegations concerning AFT's conduct from September 1, 2012 through January 23, 2013. During this time, Charging Party wanted to pursue a claim against his employer, the Los Angeles Community College District (District) because Charging Party was not called to interview for the Physics Instructor position. The Warning Letter explained, however, that "PERB is prohibited from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." Thus, the Warning Letter examined only AFT's conduct that occurred after January 3, 2013.

[1] EERA is codified at Government Code section 3540 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

AFT's conduct after January 3, 2013 consisted of AFT Representative Pat Allen's (Allen) January 23 voice-mail communication to Charging Party. That voice-mail message indicated that Allen had lost documents relevant to Charging Party's claim against the District and requested that Charging Party provide her his copies of the paperwork so she could prepare for an upcoming meeting with the District regarding his concerns.

On January 24, 2013, Charging Party sent an e-mail message to Allen stating he had "seen nothing short of a pattern of half-baked and bad faith representations" in her representation of him in his case and that he would file an Unfair Practice Charge with PERB. Charging Party states "After this date I stopped communicating with Pat Allen and have maintained this lack of communication until today."

The Warning Letter explained that Allen's acknowledgement that she lost the paperwork and her request that Charging Party provide additional copies to her in preparation for a meeting with the District, did not demonstrate that AFT's conduct was arbitrary, discriminatory, in bad faith, lacked a rational basis or was devoid of honest judgment. (Warning Letter, p. 5, citing *Fremont Unified District Teachers Association, CTA/NEA (King)* (1980) PERB Decision No. 125; *United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258.) The Warning Letter also stated the allegations did not demonstrate AFT's loss of Charging Party's documents amounted to a failure to perform a ministerial act that completely extinguished Charging Party's right to pursue his claim. (*Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H.)

In the First Amended Charge, Charging Party asserts that the totality of the allegations, and not just the allegations regarding conduct that occurred within the six months preceding the date Charging Party filed the charge, should be evaluated in determining whether or not Charging Party has established a prima facie case.[2]

In *Mount Diablo Education Association (Scott)* (2010) PERB Decision No. 2127, the Board held that in duty of fair representation cases based on the "pattern of conduct" theory, a

[2] Charging Party asserts "What is the significance of the date January 3, 2013? A date alone signifies nothing." Charging Party further asserts the conduct on January 23, 2013 "is only a rather small component of the totality of allegations made by the Charging Party....To base a prima facie decision on this allegation alone is to do gross injustice to Charging Party's case of eight pages of fact-filled documentation." Charging Party also asserts Ms. Allen "does not read Charging Party's emails time and again, in aloof disregard of Charging Party's sound suggestions she makes arbitrary decisions, she has an unjustified certitude (in fact, a bias) against the Charging Party's ability to get the physics instructor job, and she finally gets to 'lose everything' that the Charging Party had sent her. If this does not constitute bad faith, then what does? No single one of these behaviors, by itself is a determining factor. But all considered together, they point to one conclusion: Bad faith and arbitrary conduct." (Attachment to First Amended Charge, p. 5.)

violation may be established on inaction that occurred more than six months before the charge was filed, provided the inaction was part of the same course of conduct as inaction within the statutory limitations period. However, the exclusive representative's failure to take certain actions does not establish a violation, if the overall pattern of conduct was one in which the union assisted the employee. (*Ibid.*)

According to the charge and the First Amended Charge, AFT's overall conduct breached the duty of fair representation because AFT representatives: failed to read Charging Party's detailed description of Charging Party's claims against the District; failed to respond until Charging Party contacted Allen; set-up and attended a meeting with the Valley College President who had nothing to do with Charging Party's claim that involved a physics position at City College; offered to City College the option that Charging Party be assigned to part-time physics instruction even though Charging Party insisted he should only be given a full-time position; failed to respond to Charging Party's contention that the District should "right the wrong"; failed to read Charging Party's e-mail messages; failed to bring documents to a meeting with the City College President and brought a document Charging Party had never seen before; failed to share knowledge about the arbitration voting process or "fibbed" about the process; failed for several days to relay the City College President's response to Charging Party; and lost Charging Party's paperwork.

More specifically, Charging Party alleges Allen "arbitrarily and unnecessarily set up a meeting without any regard to the merits of such meeting even though Charging Party alerted her as much....In retrospect, it seems the meeting was engineered by Pat Allen so that the meeting would dissuade Charging Party early on from pursuing Charging Party's grievance. But Charging Party's grievance was a 'slam-dunk case', in that it was an easily factually verifiable violation of the CBA Article by Charging Party's employer." (Attachment to First Amended Charge, p. 2.) Charging Party alleges "Allen again arbitrarily decided to go against Charging Party's well-reasoned wishes to teach only a full time position, not a part time position. [¶] It has been Pat Allen's consistent pattern of behavior to ignore, even dismiss, all worthwhile and well-reasoned ideas and suggestions of the Charging Party, Albert Natian. She has done so by not listening, not remembering, by ignoring, by failing to read Charging Party's emails time and again, etc." (*Ibid.*) Charging Party also alleges Allen's "certitude that Charging Party would not have a good chance to get the physics instructor job" was baseless and arbitrary. (*Ibid.*)

In the Original Charge, Charging Party alleged Allen said "we can go to arbitration...but the decision to go to arbitration is to be decided by the union....She said the grievance representative[s] of all the nine colleges would vote on my case. So, I asked her what she thought about my case. She said she would not vote for it....I pursued and asked her about the manner in which the vote takes place. She first indicated well it's a vote and people let their choice be known. I asked if it is by secret ballot or by voice. The way she answered indicated that she was not sure how the vote took place....[I]t became apparent that she was not willing to be forthcoming and honest about the actual voting process to decide my case." (Original Charge, pp. 4-5.) In the First Amended Charge, Charging Party alleges Allen "failed to give a

coherent answer" about the arbitration voting structure and "fibbed and quickly changed the subject." (*Ibid.*)

Charging Party also alleges "Allen had an affirmative duty as Charging Party's representative to find out in what ways Charging Party was unhappy with her representation and how she could fix the problems, but she failed to show any interest....This decision by [the] AFT Representative to not represent has effectively extinguished Charging Party's right to pursue his grievance claim....The AFT Representative had an additional opportunity to demonstrate its willingness (if any) to represent Charging Party when on July 9, 2013, Charging Party sent an email to Dan Walden of City College as well as cc to AFT Representative Pat Allen and AFT President Joanne Waddell in which Charging Party discussed the [District's] failed promise to correct errors...." (Attachment to First Amended Charge, p. 6.)[3]

The above-listed allegations, however, do not demonstrate that AFT's conduct breached the duty of fair representation for the following reasons:

Charging Party alleges Allen "arbitrarily and unnecessarily set up a meeting" with Valley College even though Charging Party alerted her that such meeting was unnecessary, that Allen should not have sought a part-time position for Charging Party as a resolution to Charging Party's claim, and that Allen's "certitude that Charging Party would not have a good chance to get the physics instructor job" was baseless and arbitrary. While Charging Party concludes AFT's conduct was arbitrary, none of these allegations demonstrate Allen's conduct was arbitrary, discriminatory, or in bad faith. (*United Teachers of Los Angeles (Collins)*, *supra*, PERB Decision No. 258.) The allegations do not assert "sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment." (*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332.) For example, it is not evident why a meeting with the College where Charging Party was currently working, a compromise consisting of a part time physics position, or Allen's alleged belief that Charging Party did not have a good chance of getting a physics job, lacked a rational basis. It is clear that Charging Party disagreed with Allen's conduct and strategy, however, there is no information

[3] In the July 9, 2013 e-mail message, Charging Party informed Walden that "LACC continues to remain under the false impression that I am still interested in transferring to the LACC Math Department due to the fact that the error discussed at your office on October 18, 2012 has not yet been corrected and persists to this day. Furthermore, Carlos Covarrubias has not – after one whole year – corrected the error.... [¶¶] All I am requesting is a transfer to your Physics Department. Can it be done?" (First Amended Charge, e-mail attachment.) On July 11, 2013, Walden responded to Charging Party (and copied Allen and Waddell) and he explained he knew Charging Party's "interest was in physics" but that Charging Party was invited to a math interview "because we were notified by the District office that you were on the math transfer list" and LACC "did not hire a physics instructor this time around, so you would not have received an invitation to interview for physics this year." (First Amended Charge, e-mail attachment.)

demonstrating that Allen's conduct was irrational. In addition, although Charging Party disagreed with the way Allen pursued his claim, an exclusive representative's failure to pursue a grievance in the way requested by the employee does not necessarily constitute a breach. (*Coalition of University Employees (Buxton)*, *supra*, PERB Decision No. 1517-H.)

Charging Party asserts Allen should have responded to Charging Party's e-mail message to Dan Walden on July 11, 2013, and that "Allen had an affirmative duty as Charging Party's representative to find out in what ways Charging Party was unhappy with her representation and how she could fix the problems." However, Charging Party informed Allen on January 24, 2013, in an e-mail message that he had "seen nothing short of a pattern of half-baked and bad faith representations" by Allen and that he would file an Unfair Practice Charge with PERB. Charging Party asserts he stopped communicating with Allen on that date and "maintained this lack of communication until today." Given the fact that Charging Party informed Allen he was unhappy with his representation and would be pursuing a claim against AFT with PERB, it does not appear that AFT's lack of response to Charging Party's e-mail message to City College Representative Walden on July 11, 2013, wherein AFT was "cc'd," was arbitrary, discriminatory or in bad faith. Although Charging Party alleges that Allen's choice "not to act on" his e-mail or to "not represent has effectively extinguished Charging Party's right to pursue his grievance claim," the allegations do not provide information demonstrating that AFT did anything to "completely extinguish Charging Party's right to pursue his claim." (*Coalition of University Employees (Buxton)*, *supra*, PERB Decision No. 1517-H.)

Under a review of AFT's overall pattern of conduct, it appears AFT continued to assist Charging Party even though Charging Party did not agree with the way AFT wanted to pursue his claim. Such disagreement does not constitute a breach of the duty of fair representation. (*Coalition of University Employees (Buxton)*, *supra*, PERB Decision No. 1517-H.) AFT's assistance was forthcoming up until January 24, 2013 when Charging Party informed AFT he would pursue a claim with PERB and Charging Party "stopped communicating with Pat Allen." Thus, under the overall pattern of conduct, Charging Party's allegations that AFT failed to take certain actions does not establish a violation where the overall pattern of conduct was one in which AFT assisted Charging Party. (*Mount Diablo Education Association (Scott)*, *supra*, PERB Decision No. 2127.)

Assuming arguendo that the allegation that Allen was not sure on November 19, 2012 how the arbitration voting procedure worked (Original Charge) and that Charging Party's later allegation that Allen "fibbed" about the arbitration procedure (First Amended Charge) demonstrated bad faith, a single act of bad faith, even if true, occurring outside the limitations period does not demonstrate a breach of the duty of fair representation where AFT's overall pattern of conduct was one in which AFT assisted Charging Party. (*Mount Diablo Education Association (Scott)*, *supra*, PERB Decision No. 2127.)

Therefore, the charge is hereby dismissed based on the facts and reasons set forth above and in the October 4, 2013, Warning Letter.

Right to Appeal

Pursuant to PERB Regulations, Charging Party may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs., tit. 8, § 32635, subd. (a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, § 32635, subd. (b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for

filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs., tit. 8, § 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

M. SUZANNE MURPHY
General Counsel

By _____
Mary Weiss
Senior Regional Attorney

Attachment

cc: Lawrence Rosenzweig, Attorney, Law Offices of Lawrence Rosenzweig

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2809
Fax: (818) 551-2820

October 4, 2013

Albert Natian

Re: *Albert Natian v. American Federation of Teachers, Local 1521 (Los Angeles College Faculty Guild)*
Unfair Practice Charge No. LA-CO-1584-E
WARNING LETTER

Dear Mr. Natian:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 3, 2013. Albert Natian (Charging Party) alleges that the American Federation of Teachers, Local 1521 (Los Angeles College Faculty Guild) (AFT or Respondent) violated section 3543.6 of the Educational Employment Relations Act (EERA or Act)[1] by failing to fulfill the duty of fair representation.

FACTS AS ALLEGED

For 25 years, Charging Party has been an Instructor employed by the Los Angeles Community College District (District). Charging Party worked at Valley College until the Fall of 2012, when Charging Party was transferred to City College based upon Charging Party's request for transfer. Unbeknownst to Charging Party, it appears that District Administrator Carlos Covarrubias (Covarrubias) indicated incorrectly on Charging Party's transfer paper work that Mathematics was Charging Party's choice of discipline. Charging Party's choice was Physics and the transfer paper work should have reflected this. It appears that around the time Charging Party made his request to transfer to City College, the College never called Charging Party for an interview for a Physics position at City College. It appears Charging Party was assigned to teach Mathematics at City College for the 2012-2013 school year.

On September 1, 2012, Charging Party provided a detailed description of the District's alleged violation of Article 34, Section A, subsection 3c of the AFT-District Collective Bargaining Agreement (CBA) to three AFT Representatives. It appears Charging Party believed the CBA Article entitled Charging Party to a full time position teaching Physics at City College.

[1] EERA is codified at Government Code section 3540 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

On September 4, 2012, Charging Party provided a grievance and Power of Representation Form to AFT. It appears AFT did not respond to Charging Party's grievance and form and on September 11, 2012, Charging Party called AFT Representative Pat Allen (Allen). Allen had not read Charging Party's e-mail messages or forms. Although Charging Party informed Allen that the CBA violation and grievance had nothing to do with Valley College, Allen set up a meeting with Valley College Vice President Karen Daar (Daar). Charging Party, Allen and Daar met on October 2, 2012.

On October 5, 2012, Michael W. Shanahan of City College informed Charging Party that the case had been forwarded to City College. Charging Party, Allen and City College Administrator Dr. Dan Walden (Walden) met on October 18, 2012. Although Charging Party told Allen prior to the meeting that he was not interested in a part-time Physics assignment, Allen suggested to Walden that Charging Party teach one or two physics classes in lieu of a full time position. At this meeting, all parties discovered Covarubbias' error that indicated Mathematics (and not Physics) on Charging Party's transfer paper work. It appears that Walden provided a Reply to Allen and/or Charging Party that gave assurances that the District would take steps to prevent the recurrence of the type of error that happened with Charging Party's transfer request paper work. After the meeting, Charging Party told Allen that the District should assume responsibility for "righting the wrong" and reassign him to the Physics Department at City College, but Allen never responded to Charging Party's idea. Charging Party believes Allen did not read Charging Party's e-mail messages. Charging Party also told Allen that he believed that Walden did not feel an obligation to remedy the matter because Covarrubias, who works for the District and is not assigned to the City College, made the mistake.

Allen set up a November 19, 2012, meeting with City College President Renee Martinez (Martinez). Prior to the meeting, Allen requested that Charging Party provide her with a copy of his grievance because she left her copy behind. Allen also told Charging Party about a letter she wrote that Charging Party had never seen before. Allen also told Charging Party that even if he had been called for the Physics interview, he would not have had a good chance of getting the job anyway. It appeared to Charging Party that Allen was completely unaware of previous ideas Charging Party had raised in previous e-mail messages to Allen. Allen also told Charging Party that if Martinez upheld Walden's decision to deny Charging Party's remedy, Charging Party could go to arbitration, but the decision to go to arbitration would be decided by grievance representatives from all nine colleges. Charging Party asked Allen what she thought about his case and Allen said she would not vote for arbitration because she would be biased in his favor. Charging Party asked whether the vote was by secret ballot but it appeared that Allen did not know the answer and did not know or was not forthcoming regarding whether the arbitration vote was governed by union bylaws. When Charging Party and Allen went into the meeting with Martinez, Allen presented a letter that Charging Party had never seen before wherein Allen stated "AFT [is] satisfied regarding the statement in Dan Walden's reply."

On November 20, 2012, Charging Party sent an e-mail message to Allen asking whether Martinez had responded. On November 24, 2012, Allen sent an e-mail message to Charging

Party stating Martinez upheld Walden's response. Martinez's response was provided to Allen on November 19, 2012, but Allen did not provide it to Charging Party until November 24, 2012.

On January 23, 2013, Allen left a voice mail message for Charging Party reminding him of a meeting about his case on January 28. Allen also stated "do not email me at my old address. Something has happened. I've lost it all...I have lost everything that you had sent me. I had stored it there and it's gone." Allen also asked Charging Party to send her the paper he had written and a copy of the grievance to a new e-mail address.

On January 24, 2013, Charging Party sent an e-mail message to Allen stating he had "seen nothing short of a pattern of half-baked and bad faith representations" in her representation of him in his case. Charging Party also stated he would file an Unfair Practice Charge with PERB. Charging Party states "After this date I stopped communicating with Pat Allen and have maintained this lack of communication until today."

On June 17, 2013, City College Senior Secretary Erica Johnson sent an e-mail message to Charging Party inviting him to interview for a full time Mathematics Instructor position at City College. Charging Party alleges this invitation to interview for a Mathematics position demonstrates the District never corrected its original error when it wrongfully believed Charging Party was interested in a Mathematics position when he was actually interested in a Physics position. Charging Party further asserts the District's failure to correct its original error was a result of Allen's attitude toward Charging Party and his case.

DISCUSSION

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Charging Party may do so by alleging sufficient information to describe the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

The Charging Party's burden also includes alleging facts showing that the unfair practice charge was timely filed; i.e., that the alleged unfair practice occurred no more than six months prior to the filing of the charge. (*Los Angeles Unified School District* (2007) PERB Decision No. 1929; *City of Santa Barbara* (2004) PERB Decision No. 1628-M.) PERB is prohibited from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.) The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177.) In a charge that alleges the exclusive representative has failed to meet its

duty of fair representation, the statute of limitations period begins to run when the Charging Party knew that further assistance from the union was unlikely. (*IFPTE, Local 21, AFL-CIO (Hosny)* (2011) PERB Decision No. 2192-M.)

Charging Party has alleged that the exclusive representative denied Charging Party the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. (*Fremont Unified District Teachers Association, CTA/NEA (King)* (1980) PERB Decision No. 125; *United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of EERA, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory, or in bad faith. In *United Teachers of Los Angeles (Collins)*, the Public Employment Relations Board stated:

> Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations omitted.]
>
> A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal. [Citations omitted.]

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

> must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment.

(*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; emphasis in original.)

With regard to when "mere negligence" might constitute arbitrary conduct, the Board observed in *Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "to cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting *Dutrisac v. Caterpillar Tractor Co.* (9th Cir. 1983) 749 F.2d 1270, at p. 1274; see also *Robesky v. Quantas Empire Airways, Ltd.* (9th Cir. 1978) 573 F.2d 1082.)

Although the statute of limitations period begins to run when the Charging Party knew that further assistance from the union was unlikely, it does not appear that AFT ever withheld or refused to provide further assistance. Thus, allegations concerning AFT's conduct within the six months prior to the date the unfair practice charge was filed, from January 3, 2013 forward, are timely. Here, the only alleged conduct by the union that occurred after January 3, 2013 was Allen's voice-mail communication on January 23, 2013, to Charging Party, wherein she: reminded Charging Party of a meeting about Charging Party's case on January 28; stated she lost everything Charging Party had sent to her; and asked Charging Party to send to her, at a new e-mail address, the paper Charging Party had written and a copy of Charging Party's grievance.

The allegations concerning Respondent's conduct on January 23, 2013, wherein Respondent acknowledged losing Charging Party's paper and grievance and requested copies of the same, do not demonstrate Respondent's conduct was arbitrary, discriminatory, in bad faith, lacked a rational basis or was devoid of honest judgment. (*Fremont Unified District Teachers Association, CTA/NEA (King)*, *supra*, PERB Decision No. 125; *United Teachers of Los Angeles (Collins)*, *supra*, PERB Decision No. 258.) The allegations also do not demonstrate Respondent's loss of Charging Party's documents amounted to a failure to perform a ministerial act that completely extinguished Charging Party's right to pursue his claim. (*Coalition of University Employees (Buxton)*, *supra*, PERB Decision No. 1517-H.)

For these reasons the charge, as presently written, does not state a prima facie case.[2] If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by an authorized agent of Charging Party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the Respondent's representative and the original proof of service must be filed with

[2] In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

PERB. If an amended charge or withdrawal is not filed on or before October 14, 2013,[3] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Mary Weiss
Senior Regional Attorney

MW

[3] A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)